

**IN THE COURT OF SESSIONS
JUDGE::::BAKSA::::MUSHALPUR**

Present: Mr. A. Rahman, L.L.M, AJS.

(Committed by Mr. N. U. Ahmed, Ld. CJM,
Nalbari)

SESSIONS CASE NO. 60/18

u/s 498A/313/34 IPC

Parties--

State

vs.

1. Sonet Muchahary.
2. Smt. Pramila Daimary.

---- Accused persons

Charges framed on : 21.12.2016.
Evidence recorded on : 16.03.2017, 09.08.2018,
21.10.2019, 18.01.2022.
S.D recorded on : 18.01.2022.
Argument heard on : 01.02.2022.
Judgment declared on : 01.02.2022.

Appearance:

For the State : Mr. R. Chetry, Learned Public
Prosecutor.

For the defence : Mr. P. Sarma, Ld. Advocate.

JUDGMENT

1. The instant sessions case relates to Mushalpur P.S Case No. 79/14 registered u/s 498A/313/34 IPC.

2. The prosecution case in a nutshell, unfolded in the written ejehar (FIR) is that complainant Smt. Mayashri Boro was married to accused Sonet Muchahary of village- Odalbari under Mushalpur P.S. Thereafter, she started residing with her accused husband at her matrimonial home. However, her marital life became unhappy as her husband and her mother-in-law Smt. Pramila Daimary subjected her both physical and mental cruelty at a regular interval and also forced her to cause abortion of her pregnancy without her consent. Hence, this case.

3. Police after investigation, submitted charge-sheet against both the FIR named accused persons u/s 498A/313/34 IPC. The case being exclusively triable by the court of sessions was committed by

Ld. CJM, Nalbari to the court of Hon'ble Sessions Judge, Nalbari for disposal.

4. Hon'ble Sessions Judge, Nalbari having heard both sides and considering the materials on case record, framed charges u/s 498-A/313/34 IPC against the accused persons to which they pleaded not guilty and claimed to be tried.

5. It is noteworthy that after creation of Baksa District Judiciary, the case was transferred to this court for disposal and accordingly after receipt of the record, the case has been re-numbered as Baksa Sessions Case No. 60/18.

6. To prove the charges against the accused persons, prosecution side adduced evidence of as many as five witnesses including the complainant cum alleged victim.

7. After closure of the evidence of the prosecution side, the accused persons were examined u/s 313 Cr.PC. The defence plea is of total denial of the prosecution allegation. The accused persons declined to adduce defence evidence.

8. I have heard Mr. R. Chetry Ld. PP as well as Mr. P. Sarma, Ld. Advocate for the defence.

9. Now the points falling for determination are as follows:

POINTS FOR DETERMINATION:

a) Whether both the accused persons in furtherance of their common intention subjected complainant cum victim Mayashri Boro to physical and mental cruelty by which she was likely to be driven out from her matrimonial home and likely that she might commit suicide or for which her life and limb were likely to be affected and thereby committed offence punishable u/s 498-A/34IPC?

b) Whether the accused persons in furtherance of their common intention voluntarily caused the victim to cause miscarriage of her pregnancy without her knowledge and consent and thereby committed offence punishable u/s 313/34 IPC?

**DISCUSSION, DECISION AND REASON
THEREOF:**

10. Before appreciating the evidence and also to decide as to the merit of the submission of the Ld. Counsels of both sides, it would be very much plausible to have a glance on the relevant statement of the witnesses.

11. PW-1 Mangla Boro deposed that informant Mayashri Boro is her niece. Following love affairs, accused brought her to his house at Mushalpur and got married. He has further testified that her niece informed to them that accused tortured her when she was conceived. Moreover, the accused also pressurized her to wash off her fetus to terminate her pregnancy at Petago Hospital, Bijni. He has further testified that after eight months of her marriage, Mayashri came to her parental home and after staying for two months, she returned to her parental home. PW-1 further testified that Mayashri again informed that accused again pressurized her to terminate her pregnancy at Mushalpur PHC. However, as her pregnancy could not be terminated fully at Mushalpur, so the accused took her to Dispur Hospital for full termination of her pregnancy. After three months, his niece Mayashri again returned to her parental home with bag and baggage.

12. PW-2 Shri Badan Das is the Gaon Burah of village- Ujan Nalbari, Adlabari and Singrapar. He has testified that accused Sonet Muchahary married Mayashri Boro in the year 2009 and they were leading conjugal life. However, in the year 2014, due to difference of opinion, she returned to her parental home. Cross-examination of this witness was declined by defence side.

13. PW-3 Dr. Urmi Devi Choudhury examined Smt. Mayashri Boro (complainant) on 11.07.2014 at SMK Civil Hospital, Nalbari. On examination, she found the followings-

Her last menstruation was 15th day, uterus normal, size- ante-verted, cervix- slit, transverse scar mark seen in lower abdomen 10 cm. Scar mark 2 cm x 2 cm seen above umbilicus and both lateral part of abdomen.

14. On the point of her (PW-4) pregnancy, PW-3 opined that she is supposed to be conceived as cervix is slit. However, PW-3 has clearly opined that no comment as regards the miscarriage could be given.

15. She has confirmed that Exbt.1 is the medical report and Exbt.1(1) is her signature. Exbt.2 is the

X-ray report and Exbt.2(1) is the signature of Dr. Prabodh Kr. Sarma.

16. During cross-examination, PW-3 has replied that the uterus was found normal and she could not ascertain whether the victim was pregnant or not.

17. PW-4 Mayashri Boro has deposed that she is the complainant of this case. In the year 2009, she got married to accused Sonet Muchahary as per social customs and Hindu rites. Because of quarrel between them over certain issues, she returned to her parental home in 2014. As her husband did not visit her parental home to bring her back, so she contacted him over telephone, requesting him to take her back. As he did not respond, so she lodged the case. PW-4 has very categorically and candidly stated that for last two years, she has been peacefully and smoothly living with the accused at her matrimonial home.

18. During cross-examination, PW-4 has clearly stated that she made the allegations before the Magistrate at the time of her statement out of agony and anger with her husband. Actually no such occurrence as regards her termination of pregnancy took place.

19. PW-5 Sombari Boro is the mother of PW-4. She deposed that accused Sonet Muchahary and her daughter PW-4 were married. Now her daughter is living peacefully with her son-in-law accused at his house. She does not know why her daughter PW-4 lodged the case.

20. Now, scrutinizing the medical evidence of PW-3 and Exbt.1 report, it is clear that at the time of her examination, PW-4 was not pregnant. There was no abnormality found in her uterus.

21. PW-4 being the complainant as well as victim has not uttered anything that her accused husband subjected her to physical and mental cruelty or forced/caused her termination of her pregnancy.

22. The evidence of PW-1 is based on the information received from his niece PW-4. When she does not support the allegations of subjecting her to physical and mental cruelty or forcing/causing termination of her pregnancy by the accused persons, the statement of PW-1 has no legal basis.

23. In the light of the above discussion and observation, it is found that the accused persons are not guilty of the offence u/s 498-A/313/34 IPC. It

is proved from the evidence of PW-4 that due to quarrel with her husband over domestic issue, she lodged the case. Accordingly, both the aforesaid points are answered in the negative and in favour of the accused persons.

24. The accused persons are acquitted and set at liberty. The bail bonds shall remain in force for another six months in the spirit of Section 437-A Cr.PC.

25. Judgment declared and delivered in the open court under my hand and seal of this court on this **1st day of February, 2022.**

Dictated and Corrected by me:

Mr. A. Rahman,
Sessions Judge,
Baksa, Mushalpur

Sessions Judge,
Baksa, Mushalpur

ANNEXURE:

List of prosecution witness:

PW1 ... Mangla Boro.
PW2 ... Badan Das.
PW3 ... Dr. Urmi Devi Choudhury.
PW4 ... Mayashri Boro.
PW5 ... Sombari Boro.

List of defence witness:

Nil

List of documents exhibited:

Exbt.1 : Medical report.
Exbt.2 : X-ray report.

List of materials exhibited:

Nil.

Sessions Judge,
Baksa, Mushalpur